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From:

Sent: Tuesday, August 11, 2009 2:06:03 PM

To:

Cc:

Subject: RE: Your e-mail of 8/10/09 on DRD

I think you should determine the issue on the merits and, if the taxpayer is not entitled to the deduction disallow under the proper procedures outlined in my previous e-mail (or as provided below).

You may need to coordinate with _____ on whether including all the dividends under Line 6a with no portion of these being listed on Line 6b means automatically that none can qualify under section 243(b). (I have cc'd them in the address line above). If they conclude that you are correct on this point, you may be able to assess the dividends received deduction under section 6222. Section 6222 provides that we do not need to issue an FPAA in order to assess tax attributable to any inconsistently reported partnership item if the partner fails to attach a Form 8082 Notice of Inconsistent Treatment. If your corporate partner reported the dividend as a qualified dividend subject to the DRD, when the partnership reporting conclusively established that it could not so qualify, section 6222(c)(2) allows us to assess the inconsistently reported item without conducting a TEFRA proceeding.

If the assessment amount cannot mathematically be computed by simply comparing the corporate return to the partnership return, however, you would need to issue an affected item notice of deficiency under section 6230(a)(2)(A)(i) to make the assessment. This notice can be combined with a regular non-TEFRA stat notice if you like as long as the statute is protected using a Form 872-i. The deficiency proceedings would be bound by the partnership's characterization of the dividends (Line 6b) under Roberts v. Commissioner, 94 T.C. 853, 860 (1990).